THE HON'BLE MR JUSTICE L. NARASIMHA REDDY

Rev.C.M.A.M.P.No.4200 of 2009
in
C.M.A.No.2783 of 1998

ORDER:

This application is filed by the claimants in C.M.A.No.2783 of 1998 with a prayer to review the order, dated 25.06.2003, passed therein.

For the sake of convenience, the parties herein are referred to as arrayed in the O.P.

The claimants filed O.P.No.70 of 1996 before the Motor Accidents Claims Tribunal-cum-District Judge, Adilabad, claiming Rs.2,24,500/-,
as compensation, on account of the death of one Sri Doddipatla Ramulu.

It was pleaded that the deceased Ramulu, husband of the 1st claimant and father of claimants 2 to 4, was employed as driver on a lorry, bearing No. AAT 5565, owned by the 1st respondent and insured with the 2nd respondent. It was alleged that on 10.09.1990, when the lorry was proceeding towards Ashwaraopet, Khammam District and reached Gattugudem Cross Roads, Ramulu turned the vehicle to right side of the road to avoid a cyclist, and in the process, the lorry turned turtle, and he died on the spot. The cleaner of the lorry is said to have sustained injuries. Crime No.28 of 1990 was registered. According to

them, the deceased was earning Rs.1,200/-, per month, in addition to batta of Rs.25/-, per day, and that he was aged 32 years.

The 1st respondent remained *ex parte*. The O.P. was contested by the 2nd respondent disputing various facts pleaded in the O.P. Through its order, dated 20.10.1997, the Tribunal awarded a sum of Rs.1,68,600/- and apportioned the same among the claimants.

The 2nd respondent filed C.M.A.No.2783 of 1998 before this Court. The claimants, on the other hand, filed cross-objections. The principal ground urged by the 2nd respondent was that the O.P., was not maintainable under the provisions of the Motor Vehicles Act (for short "the M.V. Act"), and at the most, the claimants could have approached the Commissioner under the Workmen's Compensation Act (for short "the W.C. Act"). Through the order under review, this Court opined that the claimants can approach the Commissioner, and ultimately, observed that,

"the appeal is accordingly disposed of with the above direction. In the light of the finding in the appeal, cross-objections are also dismissed. No costs."

The claimants submit that there is no prohibition for the dependants of a deceased employee to claim compensation under the M.V. Act. They further plead that, even if the claim is not tenable under the M.V. Act, it is maintainable under the W.C. Act and the compensation payable under the latter enactment could have been granted. It is also stated that the operative portion of the order left the

matter in uncertainty and the claimants are unable to pursue their remedies.

Heard learned counsel for the claimants and learned counsel for the 2nd respondent.

This Court took note of the purport of Section 167 of the M.V. Act and held that the claimants could have approached the Commissioner for Workmen's Compensation and it was also observed that the delay, if any, in this regard, shall be condoned. However, in the operative portion,

it was not indicated as to whether the order passed by the Tribunal is set aside or left in tact or modified in any other manner. Unless the order passed by the Tribunal was specifically set aside, the rights that have accrued to the claimants could not have been taken away. This Court is of the view that the claimants cannot be driven to another forum, at this length of time, though they would be entitled to get higher amount of compensation. Further in certain cases, the Supreme Court held that even where a claim, which is otherwise to be presented under the W.C. Act, is submitted before the Tribunal under Section 173 of the M.V. Act, the compensation can be awarded by applying parameters of the W.C. Act.

Therefore, the Rev.C.M.A.M.P., is allowed and the order under review is set aside. The C.M.A. is dismissed, however, by directing that the rate of interest awarded by the Tribunal is slashed down from 15% to 7%, per annum. The claimants are not able to point out as to

how they are entitled to the enhancement of compensation. The cross-objections are accordingly dismissed. There shall be no order as to costs.

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L.NARASIMHA REDDY, J

Dt:12.12.2011

GJ